

PREDETERMINATION SETTLEMENT AGREEMENT

CP# 09-16-69576
HUD# 07-17-5068-8

PARTIES TO THE SETTLEMENT AGREEMENT:

RESPONDENT

JERRY'S HOMES, INC.
10430 New York Avenue, Suite C
Urbandale, Iowa 50322-3773

COMPLAINANT

ANGELA JACKSON
Commissioner, Iowa Civil Rights Commission
400 East 14th Street
Des Moines, Iowa 50319

and

IOWA CIVIL RIGHTS COMMISSION
400 East 14th Street
Des Moines, Iowa 50319

Complainant's Allegations:

Complainant is a member of the Iowa Civil Rights Commission (ICRC). As a member, Complainant has the authority to file a complaint alleging a discriminatory practice in violation of the "Iowa Civil Rights Act of 1965," Iowa Code Chapter 216.

Complainant alleged Respondent designed and constructed covered multifamily dwelling units in violation of the design and construction accessibility requirements of the Iowa Civil Rights Act (ICRA) and the federal Fair Housing Act (FHA). Complainant alleged Respondent violated the "usable doors" and the "usable kitchens and bathrooms" requirements.¹

Complainant specifically alleged the door-opening hardware on the exterior side of the primary entrances to Unit 19 (10432 Dorset) and Units 2 and 14 (10301 Dorset Drive) at Adam Ridge Condos [henceforth referred to as "Adam Ridge"] in Johnston, Iowa, are doorknobs, which requires tight grasping and twisting to open, which are unusable by

¹ Iowa Code §§ 216.8A(3)(c)(3)(b) and 216.8A(3)(c)(3)(c)(iv); 24 C.F.R. §§ 100.205(c)(2) and 100.205(c)(3)(iv).

tenants with disabilities causing diminished strength and use of hands or wrists. Complainant also specifically alleged the distance from the midline of the bathroom sink to the adjoining wall in each of the two bathrooms was less than the minimum 24 inches required for an accessible parallel approach due to the under cabinets being non-removable. The distance in one bathroom measured 22 ½ inches and the distance in the other bathroom measured 23 inches.

Description of the Subject Property

Adam Ridge consists of seven 24-unit apartment buildings. Each building has three stories with eight units per floor and no elevators. Since there are no elevators, only the eight ground-floor units in each of the buildings, totaling 56 units, are “covered”² by the design and construction provisions of the ICRA and FHA.³

The following table gives the address of each of the seven buildings and the date each building was issued a Certificate of Occupancy.

Address [Dorset Drive]	Certificate of Occupancy
10301	July 19, 2016
10308	July 19, 2016
10425	April 19, 2016
10432	December 18, 2015
10448	July 19, 2016
10457	July 19, 2016
10516	July 19, 2016

The scope of this Predetermination Settlement Agreement henceforth referred to as “Agreement” covers all of the ground-floor dwelling units. According to the plans obtained from the Polk County Recorder’s website, the construction of all seven buildings was based on the same design.⁴ Each building has two types of units – two-bedroom and two-bathroom units (“Ashton”) and three-bedroom and two-bathroom units (“Brewster”). There are four ground-level units of each type in each building.⁵

Respondent’s Defenses

Jerry’s Homes acknowledged the main entrance doors at the tested units had doorknobs at the time of the test. However, Jerry’s Homes maintains the doorknobs are temporary,

²“Covered multifamily dwellings” or “covered multifamily dwellings subject to the Fair Housing Amendments” means buildings consisting of four or more dwelling units if such buildings have one or more elevators; and ground floor dwelling units in other buildings consisting of four or more dwelling units.” Fair Housing Accessibility Guidelines, Federal Register, Vol. 56. No. 44, Wednesday, March 6, 1991, Rules and Regulations, page 9500.

³42 U.S.C. §3604(f)(7); Iowa Code §§216.2(4)(a), 216.2(4)(b).

⁴

<http://landrecords.polkcountyiowa.gov/LandRecords/protected/SrchBookPage.aspx?idx=GEN&bk=15853&pg=555&bAutoSearch=true> (Last visited on Sept. 22, 2016).

⁵ See Appendix A for floorplans.

and are replaced with lever handles when tenants take possession. Jerry's Homes stated the doorknobs are used because (1) lever handles are more likely to be torn off by persons seeking to illegally break into the unoccupied units and (2) all of the temporary doorknobs are manufactured and installed to be opened with the same key, facilitating easy access by construction contractors and subcontractors.

Jerry's Homes maintain the bathroom sinks in the tested units are actually compliant, citing their own measurements of the distance from the midline of each sink in each bathroom to the adjoining wall as 24 inches at least.

Predetermination Settlement Agreement

A complaint having been filed by Complainant against Jerry's Homes with ICRC under Iowa Code Chapter 216 and there having been a preliminary inquiry, the parties do hereby agree and settle the above-captioned matter in the following extent and manner:

Acknowledgment of Fair Housing Laws

1. Jerry's Homes agrees there shall be no discrimination, harassment, or retaliation of any kind against Complainant or any other person for filing a charge under the ICRA; or because of giving testimony or assistance, or participating in any manner in any investigation, proceeding or hearing under the ICRA; or because of lawful opposition to any practice forbidden by the ICRA. Iowa Code § 216.11(2).
2. Jerry's Homes acknowledges the ICRA makes it unlawful to refuse to sell, rent, lease, assign, sublease, refuse to negotiate, or to otherwise make unavailable, or deny any real property or housing accommodation or part, portion, or interest therein, to any person because of the race, color, creed, sex, sexual orientation, gender identity, religion, national origin, disability, or familial status of such person.
Iowa Code §§ 216.8(1)(a) and 216.8A(3)(a).

Jerry's Homes acknowledges the FHA makes it unlawful to refuse to sell, rent, lease, assign, sublease, refuse to negotiate, or to otherwise make unavailable, or deny any real property or housing accommodation or part, portion, or interest therein, to any person because of the of race, color, religion, sex, familial status, or national origin.
42 U.S.C. 3604(f)(1)(a) (§ 804(f)(1) of the Fair Housing Act).
3. Jerry's Homes acknowledges the FHA and ICRA make it unlawful to discriminate against another person in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with the dwelling because of a disability. 42 U.S.C. 3604(f)(2); Iowa Code § 216.8A(3)(b).
4. Jerry's Homes acknowledges the FHA and ICRA make it unlawful to refuse to make reasonable accommodations in rules, policies, practices, or services, when the accommodations are necessary to afford the person equal opportunity to use and enjoy a dwelling. 42 U.S.C. 3604(f)(3); Iowa Code § 216.8A(3)(c)(2).

5. Jerry's Homes acknowledges the FHA and ICRA make it unlawful to discriminate against another person in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with the dwelling because of a disability. 42 U.S.C. 3604(f)(2)(a) (§ 804(f)(2)(a) of the Fair Housing Act); Iowa Code § 216.8A(3)(b)(1).
6. Jerry's Homes acknowledges as owners, developers, builders, or managers of covered multifamily dwellings – ground-floor units in a building consisting of four or more dwelling units built for first occupancy after January 1, 1992 – must build those dwellings in compliance with specific design and construction accessibility requirements, in accordance with the FHA and ICRA. Iowa Code §216. 8A(3)(c)(3); 42 U.S.C. §3604(f)(3)(C).

The United States Department of Housing & Urban Development (HUD) has described these accessibility requirements via regulation and in several publications, including the "Final Fair Housing Accessibility Guidelines." *24 C.F.R. Part 100.200 et seq.*; *56 Fed. Reg. 9,472*. In the "Guidelines," HUD presented the seven specific requirements as:

1. Accessible building entrance on an accessible route.
2. Accessible and usable public and common areas.
3. Usable doors.
4. Accessible route into and through the covered dwelling unit.
5. Light switches, electrical outlets, thermostats and other environmental controls in accessible locations.
6. Reinforced walls for grab bars.
7. Usable kitchens and bathrooms.

Voluntary and Full Settlement

7. The parties acknowledge this Agreement is a voluntary and full settlement of the disputed complaint. The parties affirm they have read and fully understand the terms set forth herein. No party has been coerced, intimidated, threatened or in any way forced to become a party to this Agreement.
8. The parties enter into this Agreement in a good faith effort to amicably resolve existing disputes. The execution of this Agreement is not an admission of any wrongdoing or violation of law. Nor is the execution of this Agreement an admission by Complainant that any claims asserted in her complaint are not fully meritorious.
9. The parties agree the execution of this Agreement may be accomplished by separate counterpart executions of this Agreement. The parties agree the original executed signature pages will be attached to the body of this Agreement to constitute one document.
10. Jerry's Homes agrees ICRC may review compliance with this Agreement. And as part of such review, Jerry's Homes agrees ICRC may examine witnesses, collect

documents, or require written reports, all of which will be conducted in a reasonable manner by ICRC.

Disclosure

11. Because, pursuant to Iowa Code §216.15A(2)(d), ICRC has not determined that disclosure is not necessary to further the purposes of the ICRA relating to unfair or discriminatory practices in housing or real estate, this Agreement is a public record and subject to public disclosure in accordance with Iowa's Public Records Law, Iowa Code Chapter 22. See Iowa Code §22.13.

Release

12. Complainant hereby waives, releases, and covenants not to sue Jerry's Homes with respect to any matters which were, or might have been alleged as charges filed with ICRC, the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, or any other anti-discrimination agency, subject to performance by Jerry's Homes of the promises and representations contained herein. Complainant agrees any complaint filed with any other anti-discrimination agency, including the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, which involves the issues in this complaint, shall be closed as Satisfactorily Adjusted.

Fair Housing / Accessible Design and Construction Training

13. Jerry's Homes agrees each of their current employees or agents who are involved in the design or construction of covered multifamily dwelling properties, will review and become familiar with the Fair Housing Accessibility Guidelines, 56 Fed. Reg. 9472 (1991) and HUD's Fair Housing Act Design Manual, A Manual to Assist Builders in Meeting the Accessibility Requirements of the Fair Housing Act, (August 1996, Rev. April 1998), <http://www.huduser.gov/portal/publications/PDF/FAIRHOUSING/fairfull.pdf>, within 60 days of the date of the Closing Letter from the Commission.

Required Modifications or Retrofits

8. Jerry's Homes agrees to make the following modifications or retrofits to Adam Ridge:

Usable Doors – Door Opening Hardware

- (a) The parties agree Jerry's Homes' current practice of replacing the doorknobs with lever-style handles at the primary door entrances to each the ground-floor units before new tenants are given keys prior to first occupancy is "technically" compliant with the requirements of the ICRA and FHA.

- (b) The parties also agree, however, prospective tenants (or household members) who have a disability that prevents tight grasping and twisting necessary to work a doorknob may be discouraged by the presence of doorknobs from applying to rent the otherwise accessible unit, thereby limiting their choice of available housing based on disability.
- (c) Jerry's Homes, therefore, agrees to communicate to prospective tenants the "temporary" nature of the exterior entrance doorknob. Jerry's Homes agrees to inform each prospective tenant of a ground-floor unit at Adam Ridge before or at the time of initial showing that the current opening hardware, the non-compliant doorknob, will be replaced by a lever handle at the time of tenant possession.

Usable bathrooms – Bathroom Sinks

- (a) The parties agree the distance from the midline of the sink to the adjacent wall in the bathroom adjacent to the master bedroom in the inspected unit was measured at less than the 24-inch minimum required by FHADM for bathroom sinks without underlying removable cabinets.
- (b) The parties acknowledge Jerry's Homes, after receiving notice of this complaint, relocated the non-compliant sink further away from the adjacent wall in order to achieve compliance with the accessibility requirement described in "(a)" above.
- (c) Jerry's Homes agrees to measure the midline of each sink to the adjoining wall in each of the bathrooms in each of the ground-floor units in each of the seven buildings at Adam Ridge within 30 days of the date on the Closing Letter from the Commission.
- (d) Jerry's Homes agrees to submit a written report to ICRC documenting each of their "sink midline to adjoining wall" measurements, along with a written construction plan and timeline (not to exceed 120 days) for making any and all necessary retrofits in order ensure all bathroom sinks in all ground-floor units at Adam Ridge meet the design and construction accessibility requirements of the ICRA and FHA. Jerry's Homes agrees to submit this written report within 60 days of the date on the Closing Letter from the Commission.

Mandatory Reporting Requirements

- 14. Jerry's Homes agrees, as any required modifications or retrofits are made to a particular unit, ICRC may then inspect such unit, and then report the results of its inspection, addressing any outstanding deficiencies, in writing and within 30 days of the inspection, to Jerry's Homes.

If the inspection indicates outstanding deficiencies, Jerry's Homes shall correct all such deficiencies within a reasonable period of time as determined by ICRC, and

shall pay a reasonable fee for another inspection by ICRC staff or pay for an inspection by a third party inspector, approved by ICRC.

15. The sale or transfer of ownership, in whole or in part, by any owner of the subject property will not affect any obligation to modify or retrofit the subject property as specified in this Agreement, unless Jerry's Homes has obtained, in writing, as a condition of sale or transfer, the purchaser or transferee's commitment to be bound by the terms of this agreement to complete all required modifications or retrofits as specified in this Agreement.

[Please see next page for the signature page]

Jerry's Homes, Inc.
RESPONDENT

Date

Angela Jackson
COMPLAINANT

Date

Kristin H. Johnson, Executive Director
IOWA CIVIL RIGHTS COMMISSION

Date